

Exhibit B-1 Contract Administration Plan

A. Purpose

1. This Contract Administration Plan is included to set forth the general contract administration activities and actions that are to be managed or taken by the ORCA Operations Manager, Joint Board or Agencies during the Operating Phase. The Agencies intend that the authorities of the ORCA Operations Manager and Joint Board are to be generally consistent with the usual grants of authorities for administration of contracts awarded by a public agency, notwithstanding the fact that each Agency may have specific policies and practices related to contract administration that are different from those described herein.
2. This Plan is intended to be consistent with grant requirements established by the Federal Transit Administration (FTA). If FTA grant requirements differ from provisions in this Plan, the FTA grant requirements shall prevail.
3. In general, the Joint Board has responsibility for overseeing the performance of the ORCA Operations Group, Joint Consultants and the Contractor. The ORCA Operations Manager has responsibility for the day-to-day management of the ORCA Operations Group. The ORCA Operations Manager shall be responsible for managing the administration of the RFC Contract and contracts with Joint Consultants, and shall make all decisions except those decisions identified in this Agreement that shall be made by the Joint Board or governing bodies of the Agencies consistent with the level of monetary expenditure authorized by the Joint Board. The ORCA Operations Manager, and members of the ORCA Operations Group designated by the ORCA Operations Manager, will monitor the performance of Joint Consultants and the Contractor and maintain a contract administration system that ensures that the consultants and the Contractor perform in accordance with the terms, conditions and specifications of the contracts.
4. The Agencies acknowledge that it is essential the ORCA Operations Manager serve as the sole communication conduit with Joint Consultants and the Contractor. Except for the limited roles of the Agency Site Managers, the Agencies and members of the Joint Board shall refrain from communicating directly with the Joint Consultants and the Contractor, unless specifically designated by the ORCA Operations Manager. However, each Agency may communicate directly with the Contractor as necessary for specialized applications (which are the sole responsibility of the Agency).
5. The Agencies acknowledge that the RFC Project has been designated an ITS test site. The Agencies shall cooperate in meeting the ITS test site requirements and, to the extent possible, provide evaluation data including before and after effectiveness data. All costs related to meeting the ITS test site requirements shall be shared by the Agencies.

B. Definitions

1. Contract Administration is the post-award administration of the contract to ensure compliance with the terms of the contract by both the Contractor or a consultant, as applicable, and the Agencies.
2. ORCA Operations Manager's Documentation is the documentation contained in the contract file maintained by or on behalf of the ORCA Operations Manager. The documentation describes the actions taken by the contracting parties in accordance with

the requirements of the contract and documents the decisions made in the administration of the contracts. This file shall contain a Contract Folder, which shall contain the official documentation relating to the procurement, award, execution, administration and closeout of the contract. The file shall, as a minimum, include the following materials:

- a. Executed contract and notice of award;
- b. Letter of credit, performance and payment bonds, or approved alternative security, bond-related documentation, and correspondence with any sureties or banks;
- c. Contract-required insurance documentation;
- d. Post-award (pre-performance) correspondence from or to the consultant or contractor or other governmental agencies;
- e. Notice to proceed;
- f. Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements;
- g. Modifications/changes to the contracts, including the rationale for the change, change orders issued, and documentation, including price/cost analysis documentation, reflecting any time and increases to or decreases from the contract price as a result of the modifications;
- h. Documentation regarding settlement of claims and disputes including, as appropriate, results of audit and legal reviews of the claims and approval by the proper authority of the settlement amount;
- i. Documentation regarding any stop work and suspension of work orders and termination actions (convenience as well as default); and
- j. Documentation relating to contract close out.

Any Agency may request copies of the Contract Folder or the ORCA Operations Manager's File, particularly if required to satisfy grant requirements. If an Agency receives a public disclosure request for any of the materials in the Contract Folder, the Agency may forward the request to the ORCA Operations Manager, who shall administer it in accordance with the policies and practices of the Agency with whom the ORCA Operations Manager is employed.

3. Change Order includes any written change to the contract terms, conditions, specifications, scope, schedule or price, and may be either bilateral or unilateral.

C. RFC Contract

1. The Agencies agree that the ORCA Operations Manager shall act as the sole conduit for communications to and from the Contractor relating to the administration of the RFC Contract, unless the ORCA Operations Manager specifically authorizes otherwise. However, each Agency may communicate directly with the Contractor as necessary for specialized applications (which are the sole responsibility of the Agency).

2. For the RFC Contract, the ORCA Operations Manager is responsible for the following functions. The ORCA Operations Manager may delegate specific activities required to perform these functions to various members of the ORCA Operations Group:

- a. Monitor compliance with contract terms & conditions;
- b. Coordinate communications and information with decision-making board;
- c. Coordinate with the Agency Site Managers to review contractor milestone deliverables, per the prescribed 45-day agency review time frame. The task and time

decomposition of the 45-day review period is generally understood to be as follows – described in business days: **1)** ORCA Operations Manager receives electronic copies of contractor documents and distributes one set to each Agency Site Manager [1 – 2 days]; **2)** Agency Site Manager duplicates material, as required, and distributes internally to reviewers [3 – 4 days]; **3)** Individual staff review period [10 days]; **4)** Agency Site Manager performs internal coordination necessary to clarify comments and/or reconcile differences of opinion and prepares one consolidated agency response which is submitted to the ORCA Operations Manager [5 days]; **5)** ORCA Operations Manager prepares one consolidated draft regional response and identifies issues and/or differences of opinion, which is provided to the Agency Site Managers [5 days]; **6)** ORCA Operations Manager and Agency Site Managers meet to resolve conflicts/issues; ORCA Operations Manager prepares one final regional response which is submitted to the Contractor [5 days].

- d. Monitor the Contractor's compliance with federal, state and local law and regulations;
- e. Monitor regional project compliance by the Contractor and Agencies with banking and financial laws, regulations & rules;
- f. Recommend to the Joint Board approval of additional card applications and revenue by Agencies;
- g. Recommend to the Joint Board approval of the Contractor's publicity materials and work-related copy by Agencies;
- h. Coordinate regional communications with Site Managers and facilities;
- i. Monitor compliance with the submission of contract documentation requirements;
- j. Coordinate audits by the Agencies or state/federal officials;
- k. Monitor compliance with federal Section 504, ADA and other federal and state civil rights requirements;
- l. Individual Agencies may acquire grant funds, which mandate compliance with specific requirements. To the extent that the grantee Agency gives the ORCA Operations Manager written notification of any such grant requirements, the ORCA Operations Manager will use good faith efforts to comply with such grant requirements;
- m. Review and approve training program and instructors;
- n. Conduct post-award orientation with ORCA Operations Group, Agencies and the Contractor;
- o. Serve as communication conduit between Agencies and the Contractor;
- p. Respond to information and public disclosure requests from the public and mass media;
- q. Monitor progress and performance by the Contractor;
- r. Oversee compliance with inspections and testing requirements;

- s. Monitor compliance with quality assurance and control plan;
- t. Monitor compliance with program management, progress and performance monitoring plan;
- u. Identify and resolve performance deficiencies;
- v. Confirm quality and quantity of work performed;
- w. Manage Change Order/amendment process;
- x. Perform cost/price analysis of Change Orders and amendments as necessary;
- y. Manage the invoice review, approval and payment processes;
- z. Monitor expenditures and report to Joint Board;
- aa. Administer the claims and disputes processes;
- bb. Administer the defective work, materials or services processes;
- cc. Administer warranties and guarantees;
- dd. Manage the contract closeout process;
- ee. Prepare and maintain the Contract Folder;
- ff. Comply with records retention requirements for Contract Folder.

3. The ORCA Operations Manager shall develop or cause to be developed appropriate procedures and practices for the items listed above. The ORCA Operations Manager may amend such procedures and practices as necessary to meet grant conditions, legal requirements, and RFC Project needs.

D. RFCS Contract Change Orders and Amendments

1.0 Any Agency may request a Change Order to the RFCS Contract by submitting a written request to the ORCA Operations Manager. The request shall describe the additional work requested, the estimated cost of such additional work, and the expected benefit of such additional work. If the ORCA Operations Manager approves the request, he or she will proceed with the negotiation and approval of the Change Order according to the procedures outlined in this subsection. If the ORCA Operations Manager denies an Agency's Change Order request, the Agency may submit the issue to the Joint Board for resolution.

2.0 All costs associated with Change Orders requested by an Agency that are determined by the Joint Board to be for the sole benefit of that Agency shall be borne entirely by the Agency rather than as a shared regional cost.

3.0 The ORCA Operations Manager shall notify each Agency of each Change Order and amendment the ORCA Operations Manager approves. Each Agency delegates to the ORCA Operations Manager its authority to negotiate and approve Change Orders and amendments, if each Change Order and amendment:

- a. does not exceed \$50,000 in added contract cost;
- b. does not, when combined with all other Change Orders, add more than thirty (30) days to the performance schedule of each phase of the contract; and
- c. does not, when added to all Change Orders and Amendments approved through this delegated authority, exceed a total of \$2,000,000 in added contract costs; and
- d. does not create a change to the RFC system architecture; and
- e. does not exceed the RFC Project Budget.

4. The ORCA Operations Manager may request that the Joint Board authorize from available contingency funds an additional amount for Change Orders if the cumulative total in paragraph 3.c above is reached. The Joint Board may authorize additional amounts at levels it deems appropriate provided the RFC Project Budget is not exceeded.

5. Prior to signing a Change Order or amendment that exceeds the above limitations, the ORCA Operations Manager shall obtain the approval from the Joint Board.

E. RFCS Contract Claims

During the RFCS Contract, the Contractor may file a Contract Claim to request additional time and/or money. The ORCA Operations Manager shall notify each Agency of each Change Order and/or amendment the ORCA Operations Manager approves or rejects as a result of a Contract Claim filed by the Contractor. Each Agency delegates to the ORCA Operations Manager its authority to negotiate and approve Contract Claims subject to the same limitations as regarding Change Orders set forth in paragraph D above.

F. Joint Consultant Contracts

1. The Agencies agree that the ORCA Operations Manager shall act as the single conduit for communications to and from consultants relating to the administration of Joint Consultant contracts, except as specifically authorized otherwise by the ORCA Operations Manager. However, each Agency may communicate directly with Joint Consultants as necessary to enable the consultants to perform work tasks.

2. Each Agency's Site Manager shall be responsible for coordinating communications with the Joint Consultants. An Agency's Site Manager shall:

- a. Coordinate with the ORCA Operations Manager on a regular basis to avoid conflicts and interface disconnects;
- b. Provide information to consultants as requested for each task deliverable;
- c. Identify Agency staff for consultants to interview and provide existing documents to consultants;
- d. Collect information and provide it to consultants based on templates as provided by consultants; and
- e. Create a record and provide a copy to the ORCA Operations Manager of the review and comments submitted by an Agency to consultants

G. Joint Consultants Contract Change Orders and Amendments

1. The ORCA Operations Manager shall notify each Agency of any Change Orders and amendments the ORCA Operations Manager approves. Each Agency delegates to

the ORCA Operations Manager its authority to negotiate and approve Change Orders and amendments, if each Change Order and amendment:

- a. does not exceed \$10,000 in added contract cost;
- b. does not, when combined with all other Change Orders and amendments, add more than thirty (30) days to the performance schedule of each phase of the contract; and
- c. does not, when added to all Change Orders and amendments approved through this delegated authority, exceed a total of \$100,000 in added contract costs.

2. The ORCA Operations Manager may request that the Joint Board authorize from available contingency funds an additional amount for Change Orders if the cumulative total in paragraph 1.c above is reached. The Joint Board may authorize additional amounts at levels it deems appropriate provided the RFC Project Budget is not exceeded.

3. Prior to signing a Change Order or amendment that exceeds the above limitations, the ORCA Operations Manager shall obtain the approval from the Joint Board.

H. Deliverables Under Joint Consultant Contracts

Each Agency shall review proposed contract deliverables under Joint Consultant contracts and provide the ORCA Operations Manager with a written approval or objection. Approval of deliverables shall not be unreasonably withheld by an Agency. If the ORCA Operations Manager has not received an Agency's signed, written objection to a deliverable within five (5) days after the Agency has received a copy of the deliverable, the Agency shall be deemed to have accepted the deliverable as submitted. If one or more Agencies raises an objection in writing that a deliverable is not satisfactory, the ORCA Operations Manager shall forward the objection to the consultant for resolution. If an objection is not resolved and the Agencies are in disagreement as to whether a deliverable is satisfactory, the Joint Board shall meet within seven (7) days after the consultant indicates it is unable to resolve the objection. The Joint Board shall make a unanimous final determination about whether to accept the deliverable. Upon acceptance of a deliverable, the ORCA Operations Manager shall notify the consultant in writing of the acceptance. The consultant may then submit an invoice pursuant to the payment provisions of the consultant contract.

I. Claims Against Joint Consultants

In the event one or more of the Agencies intends to file a claim against a Joint Consultant during the term of the contract or at any point after the contract has expired or otherwise terminated, such Agency shall notify the other Agencies at least thirty (30) days in advance of filing the claim and comply with the provisions in Section V.I-K of the Agreement to which this exhibit is attached.

J. Use of Contingency Amounts

The RFC Project Budget shall include a Contingency Amount that can be used to pay the costs of Joint Board-approved expenditures related to the RFC Project, including but not limited to Change Orders and amendments to the RFC Contract and Joint Consultant contracts. This Contingency Amount shall be allocated among the Agencies as project costs. Upon authorization by the Joint Board, the ORCA Operations Manager shall calculate contingency amounts due from each Agency and direct the Fiscal Agent to bill the Agencies accordingly. The ORCA Operations Manager shall track the contingency activity and make periodic reports to the Joint Board. The Joint Board may not approve

expenditures from the Contingency Amount that will or may exceed the contingency amounts provided by the Agencies. If additional contingency amounts are needed, the Joint Board shall make an appropriate request therefore to the Agencies.

K. Protection of Contractor IP

1.0 Purpose

The RFC Contractor is required to provide the Agencies with certain information and documents that are considered "Contractor IP" or "IP Materials for Contractor IP" under the RFC Contract. Under RFC Contract Section 35.5.1, the following CDRLs are considered Contractor IP except to the extent they constitute DDU IP.

- #1 Conceptual Design Review**
- #2 Preliminary Design Review**
- #3 Final Design Review**
- #16 System Integration Test Plan**
- #31 System Security Plan**

Certain elements of Software Documentation (CDRL #37) and other information provided to the Agencies may also constitute Contractor IP or IP Materials for Contractor IP.

The Agencies are required by RFC Contract Section 35.4.3(e) to undertake "reasonable protective measures" to prevent disclosure of Contractor IP and IP Materials for Contractor IP to other than Agency employees, contractors, consultants or new RFCS members. To provide for a consistent implementation of such measures, each Agency agrees to comply with the measures that are set forth herein.

As the term Contractor IP is used hereafter in this Section K, it shall be deemed to include both "Contractor IP" and "IP Materials for Contractor IP" as those terms are defined in the RFC Contract.

2.0 Contractor IP

2.1 Information and documents provided by ERG to the Agencies prior to Full System Acceptance may or may not contain Contractor IP as that term is defined in the Contract but, for purposes of this Section K, will be presumed to contain Contractor IP unless all the Agencies otherwise agree in writing.

2.2 The Agencies agree that they will jointly determine which information and documents provided by ERG after Full System Acceptance are properly considered Contractor IP and therefore subject to this Agreement.

3.0 ORCA Operations Manager Responsibilities

3.1 The Agencies, through the Joint Board, shall direct the ORCA Operations Manager to limit her distribution of Contractor IP to the following:

- a. the ORCA Operations Group as defined in the Interlocal, Section I (Q)
- b. any Joint Consultant as defined in the Interlocal, Section I (O)
- c. each Agency's Site Manager.

3.2 The Agencies, through the Joint Board, shall also direct the ORCA Operations Manager to:

- a. sign a Nondisclosure Agreement (attached hereto as Attachment to Exhibit B-1)
- b. obtain such Nondisclosure Agreements signed by the persons to whom she has distributed Contractor IP and any persons to whom the Site Manager has distributed Contractor IP as allowed under Section 4.0 below.
- c. maintain a file of all executed Nondisclosure Agreements
- d. apply password protection to any electronic depository of Contractor IP in order to limit access to those persons listed above who have signed the Nondisclosure Agreement.
- e. require that all members of the ORCA Operations Group and all Joint Consultants shall: (1) keep any paper copies in areas not generally accessible to the public and (2) keep any electronic files in password-protected directories.
- f. following issuance of Full System Acceptance, provide access to copies of historical versions (prior to the current version) of Contractor IP for members of the Site Managers, the ORCA Operations Group, the ORCA Regional Program Administration Group or Joint Consultants who (1) have a need to review the historical versions of Contractor IP in order to perform their assignments for the Agencies or the Joint Board; and (2) have signed the Nondisclosure Agreement (attached hereto as Attachment 1 to Exhibit B-1).

4.0 Agency Responsibilities

Each Agency shall establish a process for receiving, reviewing, distributing, retaining and destroying Contractor IP. At a minimum, said process shall comply with the following provisions.

The Site Manager (or designee in case of absence) shall be the only Agency contact authorized to receive a copy of Contractor IP from the ORCA Operations Manager.

The Site Manager shall determine assignments for review of the Contractor IP and prepare/maintain a roster of the Agency employees and contractors who need to review the Contractor IP in order to perform their assignments for the Agency.

The Site Manager shall make copies (paper or electronic) of the Contractor IP and distribute same only to those Agency employees or contractors who (1) are on the Site Manager's roster and have a need to review the Contractor IP in order to perform their assignments for the Agency; and (2) have signed the Nondisclosure Agreement.

The Site Manager shall apply password protection to any electronic depository of Contractor IP in order to limit access to those persons on the roster who have signed the Nondisclosure Agreement.

Contractor IP will not be included in any general distribution to Agency staff or third parties

All Agency employees and contractors who obtain access to Contractor IP shall (1) keep any paper copies in areas not generally accessible to the public; and (2) keep any electronic files in password-protected directories.

Following the issuance of Full System Acceptance, all electronic copies of the CDRLs listed in Section 1.0, except as provided in subsection h below, will be deleted and all hard copies of same will be destroyed.

The Site Manager may retain one paper copy, one electronic copy and one CD of as-built or final versions of CDRLs and DRs (attached hereto as Attachment 2 to Exhibit B-1). Thereafter, the Site Manager may provide access to copies for Agency employees or contractors who (1) have a need to review the Contractor IP in order to perform their assignments for the Agency; and (2) have signed the Nondisclosure Agreement (Attachment 1 to Exhibit B-1).

5.0 Requests for Disclosure of Contractor IP

In the event any Agency receives a request for public records that include Contractor IP, the Agency shall comply with applicable processes and procedures established by the Joint Board, including the process for notifying the Contractor. The Agencies agree to refuse¹ to disclose the requested Contractor IP unless the disclosure is authorized by the Contractor or ordered by a court.

¹ RCW 42.17.310(h) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

RCW 42.17.311 Nothing in RCW 42.17.310(1) (t) through (v) shall affect a positive duty of an agency to disclose or a positive duty to withhold information which duty to disclose or withhold is contained in any other law.

Attachment 1 to Exhibit B-1 Non-Disclosure Agreement

This Agreement is entered into by and between _____, ("Recipient") and _____ ("Agency").

Recitals

A. In April of 2003, the Agency joined other transit providers ("Agencies") in executing an RFCS Contract with ERG Transit Systems (USA) Inc. ("ERG") and an Interlocal Cooperation Agreement for Design, Implementation, Operation and Maintenance of the Regional Fare Coordination System ("Interlocal Agreement").

B. Pursuant to the Interlocal Agreement, as amended, the Agency has agreed to undertake certain measures to protect against unauthorized disclosure of Confidential Information.

C. These measures include the Agency entering into nondisclosure agreements with Agency employees, consultants and contractors whose duties on behalf of the Agency require that they have access to certain Contractor IP.

D. The purpose of this agreement is to impose restrictions on the Recipient's use of Contractor IP in accordance with the RFCS Contract and the Interlocal Agreement, as amended.

Terms

In consideration of the compensation received by the Recipient from the Agency, and the mutual covenants contained herein, the parties hereto agree as follows:

1.0 Confidential Information

1.1 As the term Confidential Information is used herein, it shall be deemed to include:

a. "Contractor IP" and "IP Materials for Contractor IP" as those terms are defined in the RFC Contract; and

b. any information or documents created by any person or firm that contains summaries, descriptions, excerpts or other details about "Contractor IP" and "IP Materials for Contractor IP."

1.2 Recipient agrees to treat as Confidential Information any information and documents provided by ERG, unless the Recipient is expressly informed otherwise in writing by the Agency.

1.3 When directed to do so by the Agency's Site Manager or the ORCA Operations Manager, Recipient shall destroy, through confidential shredding and/or electronic permanent deletion, any documents provided by ERG as designated by the Agency's Site Manager or the ORCA Operations Manager.

2.0 Recipient Responsibilities

2.1 Confidential Information is made available to Recipient solely for the purpose of enabling Recipient to perform its employment or contractual duties for the Agency relating to the design, implementation, operation and maintenance of the RFCS ("RFCS Purpose"). Recipient will not use, copy, disclose, disseminate or distribute any Confidential Information for any other purpose without the prior written consent of the Agency.

2.2 Recipient will protect any Confidential Information from any unauthorized use, disclosure, copying, dissemination or distribution. Recipient specifically shall:

- a. ensure that proper and secure storage is provided for the Confidential Information and take all reasonable and necessary precautions to maintain the secrecy and prevent the accidental disclosure of any Confidential Information
- b. not make notes or allow notes to be made except as necessary in connection with the RFCS Purpose;
- c. make the Confidential Information available only to those persons who have a need to know for the RFCS Purpose and have also signed a copy of this Agreement;
- d. make copies of the Confidential Information only as reasonably required for the RFCS Purpose;
- e. not deliver, distribute, display, demonstrate or otherwise make available the Confidential Information to any person(s) except as provided in Section 2.2(a) above;
- f. not remove or obliterate markings (if any) on Confidential Information indicating its proprietary or confidential nature; and
- g. take all reasonable steps to prevent unauthorized use or disclosure of Confidential Information and to regain possession of Confidential Information if unauthorized use or disclosure is discovered.
- h. immediately notify the Agency if the Recipient becomes aware of any loss or unauthorized use, access, copying or disclosure of any of the Confidential Information.

2.3 If a public disclosure request under the Washington Public Disclosure Act, RCW 42.17 et seq., is made for Confidential Information or the Recipient is required, or anticipates or has cause to anticipate that it may be required, by law or court order to disclose Confidential Information, the Recipient must immediately notify the Agency of the public disclosure request or legal requirement and use its best endeavors (without breach of applicable law) to delay and withhold disclosure until ERG has had a reasonable opportunity to oppose disclosure by lawful means.

2.4 Upon demand made at any time by the Agency and upon any termination of the Recipient's employment or contract under with the Agency, Recipient shall immediately return to the Agency all Confidential Information and any copies thereof.

3.0 Recipient's Employees and Contractors

If Recipient is a contractor, Recipient agrees to require that this Non-Disclosure Agreement be signed by all of its employees and subcontractors who require access to Confidential Information.

4.0 Applicable Law

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington. The parties agree that personal jurisdiction and venue shall exclusively reside in the Superior Court of King County Washington, for any legal action arising under the Agreement.

5.0 Successors and Assigns

This Agreement shall be binding upon the parties, their successors and assigns. Neither party shall assign this Agreement without the other party's written consent.

6.0 Survival

The terms of this Agreement shall survive any termination of my employment or the contract with the Agency under which the Recipient is performing.

7.0 Amendments

Any modification or amendment of this Agreement shall be in writing and executed by duly authorized representatives of the parties.

IN WITNESS WHEREOF, the parties hereto have signed this Nondisclosure Agreement on the dates indicated below.

Recipient

Printed Name: _____

Signature: _____

Date: _____

Agency

By: _____

Title: _____

Date: _____

Attachment 2 to Exhibit B-1 Authorized Documents Retained by Agencies

This is the authorized list of as-built or final versions of CDRLs and DRs each Agency is authorized to retain.

(List will be populated at completion of FSA.)